

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CALEB L. MCGILLVARY,

Plaintiff,

v.

ROLLING STONE, LLC, et al.,

Defendants.

23-CV-10428 (DEH)

ORDER

DALE E. HO, United States District Judge:

On November 27, 2023, the *pro se* Plaintiff filed a Complaint. *See* ECF No. 1. On April 2, 2024, Defendants moved to dismiss the case. *See* ECF No. 16. On April 19, 2024, Plaintiff filed an Amended Complaint. *See* ECF No. 33. On May 13, 2024, the assigned Magistrate Judge (Hon. Sarah Netburn) denied Defendant's Motion to Dismiss as moot, given that Plaintiff had filed an Amended Complaint. *See* May 13, 2024 Min. Entry. On May 28, 2024, Defendants filed a Motion to Dismiss the Amended Complaint. *See* ECF No. 42.

On May 30, 2024, Plaintiff filed a letter, addressed to the undersigned, requesting that “the Defendants’ 4/2/24 motion be reinstated, [with] any subsequent motions to dismiss [] stricken.” Pl.’s Mot. 1, ECF No. 48. Plaintiff further requested that the Court “issue a standing Order that decisions on pending matters in this case are not to be made, until Plaintiff’s timely-filed documents have been heard and considered.” *Id.*

Plaintiff’s application is **DENIED**. As Judge Netburn explained, Defendant’s first Motion to Dismiss is moot. The operative pleading in this suit is Plaintiff’s Amended Complaint (ECF No. 33), *not* the Complaint Plaintiff originally filed (ECF No. 1). The Court will not consider Defendants’ original Motion to Dismiss, which was filed in response to Plaintiff’s original Complaint, because that Complaint is no longer the operative pleading in this litigation.

The new briefing schedule for Defendants' Motion to Dismiss the Amended Complaint (ECF No. 42) will be set forth by Judge Netburn, to whom this case was referred for general pretrial management. Plaintiff is on notice that he may, if he wishes, reincorporate any or all of the same arguments he used in his Opposition to Defendants' original Motion to Dismiss. *See* ECF Nos. 35, 36.

SO ORDERED.

Dated: June 13, 2024
New York, New York



DALE E. HO
United States District Judge